

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,**

Plaintiff,

vs.

**D-1 PAULIN MODI,**

Defendant.

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Case No. 2:17-cr-20363

Hon. Robert H. Cleland

Mag. Judge Steven R. Whalen

**DEFENDANT PAULIN MODI'S MOTION FOR DOWNWARD  
VARIANCE FROM THE ADVISORY SENTENCING GUIDELINE RANGE**

Now comes Defendant, Paulin Modi (“Modi” or “Paul”), by and through his attorney, Walter J. Piszczatowski, and files the instant motion requesting this Honorable Court to vary downward from the applicable Advisory Sentencing Guideline Range and in support of his request, states:

1. Modi appeared before the Court on September 12, 2017 and entered a plea of guilty to Count 1 of an Information charging him with bribery conspiracy concerning programs receiving federal funds in violation of 18 U.S.C. §371 and §666(a), for conduct in calendar year 2014.

2. Modi anticipates the government will be making a motion for downward departure pursuant to USSG §5K1.1.

3. In addition, there are sentencing factors relevant to 18 U.S.C. §3553 which justify a downward variance beyond any Government recommended §5K1.1

departure, which factors are more fully outlined in the attached brief in support as well as the sentencing memorandum filed with this Court.

4. The offense of conviction carries a five-year maximum period of incarceration. The agreed-upon sentencing guideline range is 24-30 months. Pursuant to 18 U.S.C. §3561(c)(1), Modi is eligible for probation.

Wherefore, for the reasons more fully set forth in the attached brief, Defendant, Paulin Modi, respectfully requests this Honorable Court to vary downward from the Advisory Sentencing Guideline Range in this case.

Respectfully submitted,

Hertz Schram PC

/s/ Walter J. Piszczatowski (P27158)  
Attorney for Defendant Paulin Modi  
1760 S. Telegraph Rd., Ste. 300  
Bloomfield Hills, MI 48302-0183  
(248) 335-5000 / fax (248) 335-3346  
[wallyp@hertzschram.com](mailto:wallyp@hertzschram.com)

Dated: January 24, 2019

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Case No. 2:17-cr-20363

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**BRIEF IN SUPPORT OF DEFENDANT PAULIN MODI'S  
MOTION FOR DOWNWARD VARIANCE  
FROM THE ADVISORY SENTENCING GUIDELINE RANGE**

**Introduction**

Paulin Modi ("Modi") is to be sentenced by this Honorable Court on February 7, 2019, at 1:30 p.m. At that time counsel will be requesting the Court to grant a downward variance from the applicable advisory U.S. Sentencing Guidelines ("USSG" or "Guidelines"). The following facts and legal support are offered in support of Modi's request.

### **Legal Argument**

- I. Modi should receive a downward variance as he has made significant steps toward making amends for his conduct. (Post Offense Rehabilitation)<sup>1</sup>

In *Pepper v. U.S.*, 131 S.Ct. 1229 (2011) and *Gall v. United States*, 552 U.S. 38 (2007), the Supreme Court made clear that post-sentencing or post-offense rehabilitation – particularly in light of its tendency to reveal a defendant’s likelihood of future criminal conduct – is a critical factor to consider in the imposition of a sentence. In the four years since his offense, Modi has been a law-abiding citizen, which is really not surprising given the fact that this was his first contact with the criminal justice system, but the last four years evidence a concerted effort to right his wrong. As the Court is aware from his testimony, he has cooperated with the Government, and his cooperation proved to be beneficial to the Government. He has found new employment, started a new business and is proving to be a valued consulting engineer. He has used the time between his offense and sentence to actively demonstrate to the Court that he has made peace with society in a manner that signifies not only his acceptance of responsibility and desire to be a productive and contributing member of society, but also his rehabilitation. His efforts appear to be successful.

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<sup>1</sup> Other additional facts supporting this downward variance are contained in and more properly addressed in Modi’s Sentencing Memorandum.

II. Modi should be granted a downward variance from the Guidelines as he has strong connections to his family.

Modi has close family ties which will encourage him to continue to be a productive and law-abiding citizen, regardless of whatever sentence this Court deems necessary. The Guidelines fail to account for such support and motivation, but this Court can recognize the importance of family support following a conviction, as it signifies the judgment of those most affected, that the offense is something that does not define him; that they are prepared to forgive, knowing it was a failure for which he has made amends. This realization has had a serious impact on Modi and provides strong motivation to live the life of a person to be emulated and respected by his family – something which was destroyed in part by his conduct. In fact, evidence suggests familial support is a factor in lowering recidivism. *See, Shirley R. Klein, et al Inmate Family Functioning*, 46 International Int'l J. Offender Therapy and Comp. Criminology 95, 99-100 (2002) (“The relationship between family ties and lower recidivism has been consistent across study populations, different periods, and different methodological procedures.”) This fact allows the Court to consider a downward variance to reduce any contemplated sentence and couple it with other sentencing alternatives to fulfill the dictates of §3553.

- III. Modi should be granted a variance from the Guidelines based on his extraordinary acceptance of responsibility and his extreme remorse.

The Sentencing Guidelines, §3E1.1(a) allows for a 2-level reduction if the defendant clearly demonstrates acceptance of responsibility for his offense. Section 3E1.1(b) allows for an additional 1-level reduction if the defendant assisted in the investigation and prosecution of the defense by timely notifying authorities of his intent to plead guilty and thereby allowing the Government to avoid preparing for trial and to allocate the resources efficiently. *United States v Boykin*, 679 Fed. Appx. 400 (6<sup>th</sup> Cir. 2017). In the mandatory guideline era, courts generally held that an extraordinary demonstration of acceptance could justify a departure. *United States v Smith*, 311 F.Supp.2d 801, 804 (E.D. WI (2004)) (citing *United States v Gee* 226 F.3d 885, 900-02 (7<sup>th</sup> Cir. 2000), but such cases were rare. Under the advisory guideline and regime created by *United States v Booker* 543 U.S. 220 (2005) courts now have far greater flexibility to fashion sentences that fit the circumstances of the case. Where appropriate, courts may grant additional consideration to defendants who demonstrate acceptance beyond that necessary to obtain a 2 or 3-level reduction of their §3E1.1. *United States v Milne* 384 F.Supp.2d 1309, 1312 (E.D. WI (2005)) This is so because such conduct bears directly on their character, §3553(a)(1), and how severe a sentence is necessary to provide deterrents and punishment, §3553(a)(2). *Id.*

Here, it seems somewhat formalistic to say that this concern was fully addressed and taken to account by the 3-level reduction agreed to by the parties via U.S.S.G. §3E1.1. Modi not only acknowledged his involvement in the charged offense and pled guilty (in most cases, the entry of a guilty plea prior to commencement of trial combined with truthfully admitting the conduct comprising the offense of conviction is sufficient to obtain a 3-point reduction for acceptance of responsibility), he confessed his involvement, stated his intention to enter a plea to an information, and cooperated with the Government.

Remorse is a factor taken into account by the Guidelines under acceptance of responsibility. Still, it is a permissible factor for departure if it is present to some exceptional degree. This is true even where there has been credit given for acceptance of responsibility. *See, United States v. Fagan*, 162 F.3d 1280 (10<sup>th</sup> Cir. 1998). Aside from departure analyses, remorse warrants consideration as a variance factor. *United States v. Stall*, 581 F.3d 276 (6<sup>th</sup> Cir. 2009). In fact, it is possibly the single most important factor a court can consider as reflecting a person's character and whether he has been reformed and rehabilitated. *U.S. v. Baker*, 502 F.3d 465 (6<sup>th</sup> Cir. 2007).

IV. Modi should be granted a downward variance because of his work history.

In *U.S. v. Jones*, 158 F.3d 492 (10<sup>th</sup> Cir. 1998) a defendant who pled guilty to possession of a firearm by a prohibited person, received a downward departure based

on his “long and present work history ... where good jobs are scarce.” This Court should likewise consider Modi’s employment history as a basis for downward variance from the Advisory Guidelines. *See, U.S. v. Ruff*, 535 F.3d 999 (9<sup>th</sup> Cir. 2008); *U.S. v. Baker*, 443 F.2d 987 (7<sup>th</sup> Cir. 2006). This is especially relevant here given his post-offense history of employment.

Modi has been gainfully employed since he was a schoolboy in India. His only period of unemployment came in the short wake of his termination from Giffels-Webster Engineering. At that time, he embarked on a career change, which failed. He then reverted to a financially risky consulting venture, (See PSI ¶¶58-60) which has proved to be worth the risk. He has worked twice as hard to get to where he was before he ruined what was a promising career. He has a family with young adult children, one who is still largely dependent on him. That is a responsibility he cannot shirk and provides added reason to accept that he has learned his lesson and will be crime free for the rest of his life.

V. Protection of the public from further crimes of this defendant is not necessary.

One of the §3553 factors the Court will consider in imposing sentence is the need for a sentence imposed to protect the public from further crimes of the defendant. The purpose relates to both the defendant’s risk of recidivism and the danger, if any, posed by the defendant. *See, United States v. Rosales-Gonzales*, 801 F.3d 1177, 1184 (9<sup>th</sup> Cir. 2015).



Even aside from his ready acceptance of responsibility and cooperation, Modi poses virtually no risk of recidivism either intuitively or statistically. Of all the purposes of sentencing, the need to protect the public from further crimes of the defendant is one of greatest practical concern and it is the most capable of being measured. Judges should be encouraged to impose probation or below-Guideline sentences in light of this purpose. *See, e.g., United States v. Hanson*, 561 F.Supp 2d 1004, 1010 (ED Wisc. 2008).

The United States Sentencing Commission has long studied recidivism trends and, has made some key findings, including:

- Studies have repeatedly shown older offenders have a lower risk of reoffending and the commission's study confirm this finding. Just 16% of offenders older than 60 years of age at the time of release were rearrested. In comparison, more than 2/3 (67.6%) of offenders younger than 21 at the time of release were rearrested. Also, the commission's recidivism study found that recidivism rates generally increase as an offender's criminal history calculations increase (thereby increasing the offender's sentencing range). *See Recidivism and Federal Sentencing Policy* found at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/background>.
- A federal offender's age and criminal history were closely correlated with their likelihood of reoffending.
- An offender's education level was also associated with the likelihood of reoffended.

- Offenders who did not complete high school were rearrested most often (60.4%) while college graduates were rearrested least often (19.1%).

As to each of these factors, age, criminal history category, and education, Modi falls well within the less-likely-to-recidivate category. It can be stated with a high degree of certitude that he poses little danger to the public in the future and that there is no likelihood of reoffending. His conduct of conviction occurred during middle-age when he succumbed to the temptation to retain business for his company/employer by making improper payments to those who oversaw his company's contracts. His conduct and the resultant legal proceedings resulted in a hard lesson learned, and a mistake that will not be replicated.

VI. Modi should be granted a downward variance because his conviction and sentence will have a strong deterrent effect on similarly situated offenders.

This is Modi's first sentence and, therefore, any sentence this Court imposes will have a great impact on him. In fact, the proceedings themselves have already had the desired impact. Any sentence this Court pronounces will be significant and impact his life like no event other than perhaps marriage and the birth of his children. It has the dubious distinction of being his first ever sentence, with the high probability if, not the certainty, that it will also be his last. Courts have held that a custodial sentence means more to the first-time offender than to a defendant who had previously been in prison. Therefore, even this Court's imposition of a

below Guideline Sentence would have significant impact on Modi, a fact consistent with 18 U.S.C. §3553's directive that the sentence reflect the need for both "just punishment," see §3553(a)(2)(A) and adequate deterrence, see §3553(a)(2)(B). In *United States v. Baker*, 445 F.3d 987 (7<sup>th</sup> Cir. 2006), the Court felt that since the defendant had never been previously confined, two months of jail time was sufficient to impress upon him and to others, the seriousness of the offense under similar circumstances. This rationale dovetails with a similar concept: there is significant evidence that even relatively short sentences can have a strong deterrent effect on certain offenders. Richard Frase, Punishment Purposes, 58 Stanford Law Review 67, 80 (2005); see also U.S. Sentencing Commission Report regarding "Fifteen Years of Guideline Sentencing" at Page 56 (2004). This is especially true here where even a sentence of one day in jail, let alone months would result in significant punishment for Modi and assure he would never commit another crime for the rest of his life.

VII. Modi's lack of criminal history.

Modi is a first-time offender and has no prior convictions of any kind. The Sentencing Commission has recently recognized that first-time offenders with no prior convictions should be considered for more lenient sentences. In December 2016, the Sentencing Commission even proposed an amendment to the Guidelines that would decrease the offense level of a defendant by one or two points if the

defendant had no prior convictions. *See* U.S. Sent’g Commission, *Proposed Amendments to the Sentencing Guidelines* at 4 (Dec. 19, 2016), available at [http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20161219\\_rf\\_proposed.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20161219_rf_proposed.pdf). The current Guidelines lump together in Criminal History Category 1 offenders “with varying criminal histories,” including those with no prior convictions, those with stale convictions, those with convictions not otherwise counted, and those whose prior convictions produce only one criminal history point. *Id.* at 1. “Recidivism data analyzed by the Commission indicate that ‘first offenders’ generally pose the lowest risk of recidivism.” *Id.* at 1. This suggests that defendants like Modi, with no prior convictions, do not need sentences of imprisonment to further the purposes underlying sentencing.

VIII. Modi should receive a downward variance as he waited an extremely long period of time to commit his first offense.

Modi had an unblemished criminal record for the first 45+ years of his life. *See U.S. v. Fuson*, 215 Fed. Appx. 468 (6<sup>th</sup> Cir. 2007) (recognizing that defendant, convicted of felon in possession, properly received a variance in part because of an unblemished record for the previous seven years); *U.S. v. Smith*, (4<sup>th</sup> Cir. 2008) 2008 WL 1816564 (unpub.); *See, also, U.S. v. Collington*, 461 F.3d 805 (6<sup>th</sup> Cir. 2006) (a variance was appropriate in part because the Criminal History did not

reflect that “this incident was the first time that this quantity of drugs and guns had been found in Collington’s possession.”)

Modi is 50 years old. By no means old, but beyond the age that he is likely to recidivate, and someone like Modi who does not become engaged in any criminal activity until much later in life statistically has a much lower risk of recidivism in any event. Statistics support the proposition that Modi is unlikely to recidivate but his criminal history, personal characteristics, family situation, and the situational nature of the instant offense strongly support the point as well.

IX. Even a probationary sentence can, in the right circumstances, provide just punishment and satisfy the concerns addressed in §3553.

The “deterrence message” can be sent through a sentence employing different sanctions including incarceration, community confinement, supervision, and community service elements (or a combination of all or some of the above). *See, Gall, supra; Kimbrough, supra.* One important goal of sentencing is to protect the public from further crimes of a defendant. However, lengthy imprisonment is not necessary to achieve this goal because here there is no likelihood of Modi re-offending and certainly there is no longer any risk of harm to the public. Modi has all the tools to be a success in the future, and as a result, the aims of specific deterrence are not served by any lengthy imprisonment. He is

unlikely to reoffend and poses absolutely no present danger to the public. *See, U.S. v. Cherry*, 487 F.3d 366 (6<sup>th</sup> Cir. 2007).

In *Gall*, *supra*, the U.S. Supreme Court recognized that even sentences of probation result in a substantial restriction of freedom, and that although “custodial sentences are qualitatively more severe than probationary sentences in equivalent terms, offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty” including all those standard conditions and restrictions with which this Court is intimately aware, in addition to those specialized condition that the court may also impose.

Not only can the Court impose a sentence of probation with conditions, it can supplement any sentence it imposes by placing Modi on any extended period of supervised release with those special conditions it deems appropriate. In recognition of this proposition, *U.S. v. Stahl*, 581 F.3d 276 (6<sup>th</sup> Cir. 2009) held that (even) in a child pornography case, where the Guidelines were 57 – 65 months, a court’s sentence of one day in jail with ten years’ supervised release and one year house arrest was not unreasonable and recognized that Stahl’s sentence of ten years of supervised release was actually 27 months longer than the total period of incarceration and supervised release recommended by the PSIR.

Any failure by Modi to follow the law would allow the Court to impose a significant prison sentence or to take whatever additional action it deems

necessary. This very fact was recognized by *U.S. v. Autery*, 555 F.3d 864 (9<sup>th</sup> Cir. 2009) to, in and of itself, constitute an effective deterrent and thus a basis for a variance from a Guidelines sentence.

- X. Modi is not in need of any specific rehabilitation or vocational treatment.

§3553(a)(2) provides that one of the purposes of sentencing is to provide a defendant with needed medical treatment, vocational or educational training, or correctional treatment to help rehabilitate. It does not appear Modi is in need of any such educational or vocational treatment at this point in his life, although the Court may see a need to do so.

- XI. Modi should be granted a variance from the Advisory Guideline Range based on the totality of factors outlined above and required to be analyzed by this Court utilizing 18 U.S.C. §3553.

The totality of factors<sup>2</sup> outlined by 18 U.S.C. §3553 warrant a downward variance from the Advisory Guideline Range.

Wherefore, for the reasons more fully set forth herein, Modi respectfully requests this Honorable Court to vary downward from the Advisory Sentencing

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<sup>2</sup> *U.S. v. Menyweather*, 447 F.3d 625, 634 (9<sup>th</sup> Cir. 2006) recognized that in the broader appraisal available to district courts after *Booker*, courts can now ... have the discretion to weigh a multitude of mitigating and aggravating factors that existed at the time of mandatory Guidelines Sentencing, but were deemed “not ordinarily relevant.”

Guideline Range.

Respectfully submitted,

Hertz Schram PC

/s/ Walter J. Piszczatowski (P27158)  
Attorney for Defendant Paulin Modi  
1760 S. Telegraph Rd., Ste. 300  
Bloomfield Hills, MI 48302-0183  
(248) 335-5000 / fax (248) 335-3346  
[wallyp@hertzschrampc.com](mailto:wallyp@hertzschrampc.com)

Dated: January 24, 2019



**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record in this matter.

Hertz Schram PC

/s/ Walter J. Piszczatowski (P27158)  
Attorney for Defendant Paulin Modi  
1760 S. Telegraph Rd., Ste. 300  
Bloomfield Hills, MI 48302-0183  
(248) 335-5000 / fax (248) 335-3346  
[wallyp@hertzschram.com](mailto:wallyp@hertzschram.com)

Dated: January 24, 2019